

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 JESUS ESTRADA-CONTRERAS,
13 MAURICIO ESTRADA-MUNOZ, and
14 MIGUEL ORTEGA-ESTRADA

15 Defendants.
16

Case No. CR17-301RSL

ORDER GRANTING
MOTION TO QUASH
SUBPOENAS

17 This matter comes before the Court on the “Government’s Motion to Quash Subpoenas.”
18 Dkt. # 57. The parties’ dispute surrounds subpoenas that defendant Jesus Estrada-Contreras
19 issued seeking documents from Homeland Security Investigations (HSI). The government
20 appears willing to produce the materials if the parties meet and confer, and the Court encourages
21 them to do so. For the following reasons, however, the motion, Dkt. # 57, is GRANTED.

22 In this matter’s underlying case, defendants were charged with conducting a drug
23 conspiracy after a raid yielded an abundance of contraband and led to defendants’ arrests.
24 Investigators conducted defendants’ post-arrest interviews, and the *Miranda* warnings that
25 preceded them, in Spanish. This dispute stems from an effort by Mr. Estrada-Contreras to obtain
26 materials about those investigators’ Spanish language skills and HSI protocols for agents using
27 Spanish in the field. Defendant issued subpoenas to HSI and two of its agents, commanding
28 them to appear or provide the materials instead.

1 Rule 17 governs subpoenas in criminal cases, including subpoenas *duces tecum* for
2 pretrial production of evidence. The Rule empowers the Court to order the production of “any
3 books, papers, documents, data, or other objects the subpoena designates.” Fed. R. Crim. P.
4 17(c)(1). Though Rule 17 is an instrument for gathering evidence, it is not “intended to provide
5 a means of discovery.” United States v. Nixon, 418 U.S. 683, 698 (1974). To ensure the scope
6 of a Rule 17 subpoena is properly circumscribed, the party seeking pretrial production bears the
7 burden of establishing relevancy, admissibility, and specificity of the material sought. Id. at 700.
8 In making that showing, each element must be shown with particularity and conclusory
9 allegations are insufficient. United States v. Eden, 659 F.2d 1376, 1381 (9th Cir. 1981).

10 The government argues that Mr. Estrada-Contreras seeking evidence through a Rule 17
11 subpoena circumvents and undermines the discovery process provided for in Rule 16, the
12 provision in the Criminal Rules that governs discovery and mandatory disclosures between the
13 parties. The Court rejects that argument and the government’s suggestions that Rule 17 extends
14 no further than Rule 16’s scope and that a defendant must seek information from the
15 government before invoking Rule 17. The two rules are complementary and overlapping, but
16 still have different scopes. Rule 16 applies only to material in the government’s possession, it
17 covers discovery information that need not be admissible, and it only governs disclosures
18 between the government and the defendant. In contrast, Rule 17 covers subpoenas that seek
19 evidence and that apply to the government and third parties alike. Its scope is bounded by the
20 requirements of relevancy, admissibility, and specificity, Nixon, 418 U.S. at 700, not by the
21 terms of Rule 16, see United States v. Llanez-Garcia, 735 F.3d 483, 493–94 (6th Cir. 2013).

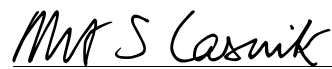
22 Though the Court rejects the government’s argument about Rule 17’s scope, defendant
23 must still show that the requested material is relevant, admissible, and specific. Id.; Eden, 659
24 F.2d at 1381. The Court concludes defendant has not met his burden of showing with
25 particularity that the requested material is relevant and contains admissible evidence. See Nixon,
26 418 U.S. at 700; Eden, 659 F.2d at 1381. The Court grants the government’s motion without
27 prejudice to defendant showing the material’s relevancy, admissibility, and specificity with
28

1 greater particularity in a subsequent subpoena application,¹ including an application submitted
2 *ex parte* if necessary. See United States v. Sellers, 275 F.R.D. 620, 624–25 (D. Nev. 2011).

3 The Court notes that Rule 16 may require the government to disclose the material
4 described in this matter’s briefing upon defendant’s request. See Fed. R. Crim. P. 16(a)(1)(E)(i)
5 (requiring that, upon request, the government produce items within its possession that are
6 material to preparing the defense). The government appears willing to confer and meet
7 defendant’s needs, and the Court assumes the government will maintain that approach going
8 forward. The Court encourages the parties to meet and confer to facilitate an exchange of
9 appropriate material and information. See LCrR 16(e) (requiring parties to confer with a view
10 toward cooperating before moving the Court for additional Rule 16 discovery).

11 For the foregoing reasons, the government’s motion, Dkt. # 57, is GRANTED. The Court
12 hereby ORDERS that the subpoenas issued to Homeland Security Investigations and Special
13 Agent Michelle Hardin-Pineda are QUASHED.

14 DATED this 10th day of May, 2018.

15
16
17 
18 Robert S. Lasnik
19 United States District Judge
20
21
22
23
24
25
26

27 ¹ Given this conclusion, the Court declines to address the government’s assertion that
28 defendant failed to comply with applicable *Touhy* regulations. See Dkt. # 57 at 10–12.